

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

ACTION ID NO. 200210372

March 21, 2002

PUBLIC NOTICE

Mr. Warren Judge, 1801 North Virginia Dare Trail, Kill Devil Hills, North Carolina 27948, has applied for a Department of the Army (DA) permit TO PLACE EARTHEN FILL MATERIAL WITHIN 20 SQUARE FEET (0.005 acres) OF DEPARTMENT OF THE ARMY (DA) JURISDICTIONAL WETLANDS, AND 14,500 SQUARE FEET (0.33 ACRES) OF DA JURISDICTIONAL WATERS TO FACILITATE THE EXPANSION OF AN EXISTING HOTEL AND THE CONSTRUCTION OF ADDITIONAL PARKING AREA. The proposed project is located east of US 158, on the west side of NC Highway 12, approximately 200 feet north of Third Street, in Kill Devil Hills, Dare County, North Carolina. Mr. George Wood, of Environmental Professionals Incorporated, Post Office Box 3368, Kill Devil Hills, North Carolina, is acting as agent for Mr. Judge in the processing of this application.

The following description of the project is taken from data provided by the applicant and from observations made during onsite inspections by representatives of the Corps of Engineers. The soils on the project site are mapped as Newhan fine sand and Duckston fine sand. The wetland area is comprised of a small fringe bordering the open water. It is dominated by black willow (*Salix nigra*), wax myrtle (*Myrica cerifera*), Marsh Alder (*Iva frutescens*), *Baccharis halimifolia*, saw greenbrier (*Smilax bona-nox*), and poison ivy (*Rhus radicans*). The area of DA jurisdictional waters to be impacted ranges in depth from 1 to 3 feet. No submerged aquatic vegetation has been observed. Plans showing the proposed work are included with this public notice.

Included with this public notice are plans showing the proposed work as well as additional information provided by the applicant detailing avoidance and minimization efforts. At this time, no compensatory mitigation is plan has been provided.

The applicant has determined that the proposed work is consistent with the North Carolina Coastal Zone Management Plan and has submitted this determination to the North Carolina Division of Coastal Management (NCCDM) for their review and concurrence. This proposal shall be reviewed for the applicability of other actions by North Carolina agencies such as:

- a. The issuance of a Water Quality Certification under Section 401 of the Clean Water Act by the North Carolina Division of Water Quality (NCDWQ).
- b. The issuance of a permit to dredge and/or fill under North Carolina General Statute 113-229 by the North Carolina Division of Coastal Management (NCDCM).
- c. The issuance of a permit under the North Carolina Coastal Area Management Act (CAMA) by the North Carolina Division of Coastal Management (NCDCM) or their delegates.
- d. The issuance of an easement to fill or otherwise occupy State-Owned submerged land under North Carolina General Statute 143-341(4), 146-6, 146-11, and 146-12 by the North Carolina Department of Administration (NCDA) and the North Carolina Council of State.
- e. The approval of an Erosion and Sedimentation control Plan by the Land Quality Section, North Carolina Division of Land Resources (NCDLR), pursuant to the State Sedimentation Pollution Control Act of 1973 (NC G.S. 113 a-50-66).

The State of North Carolina will review this public notice to determine the need for the applicant to obtain any required State authorization. No Department of the Army (DA) permit will be issued until the coordinated State viewpoint on the proposal has been received and reviewed by this agency, nor will a DA permit be issued until the North Carolina Division of Water Quality (NCDWQ) has determined the applicability of a Water Quality Certificate as required by PL 92-500.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this site is not registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register constitutes the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently, unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by work under the requested permit.

The District Engineer, based on available information, is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973.

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (in accordance with Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agencies' 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

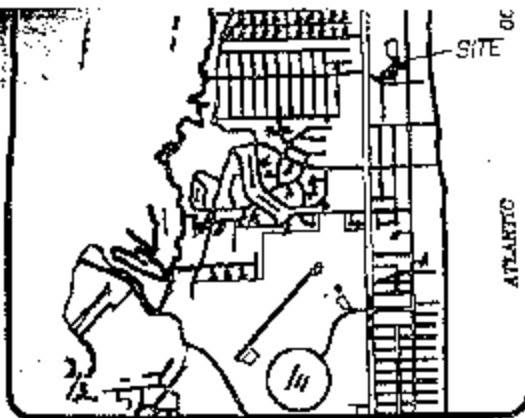
The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Generally, the decision whether to issue this Department of the Army (DA) permit will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether or not the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Wetlands/401 Unit, NCDWQ, 2321 Crabtree Boulevard, Raleigh, North Carolina 27604-2260. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction cost.

All persons desiring to make comments regarding the application for Clean Water Act certification should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 4401 Reedy Creek Road, Raleigh, North Carolina 27607, on or before April 1, 2002, Attention: Mr. John Dorney.

Written comments pertinent to the proposed work, as outlined above, will be received in the Corps of Engineers, Wilmington District, Washington Regulatory Field Office, Attn: Mr. Tom Walker, Post Office Box 1000, Washington, North Carolina, 27889, until 4:15 p.m., April 8, 2002, or telephone (919) 975-1616, extension 24.

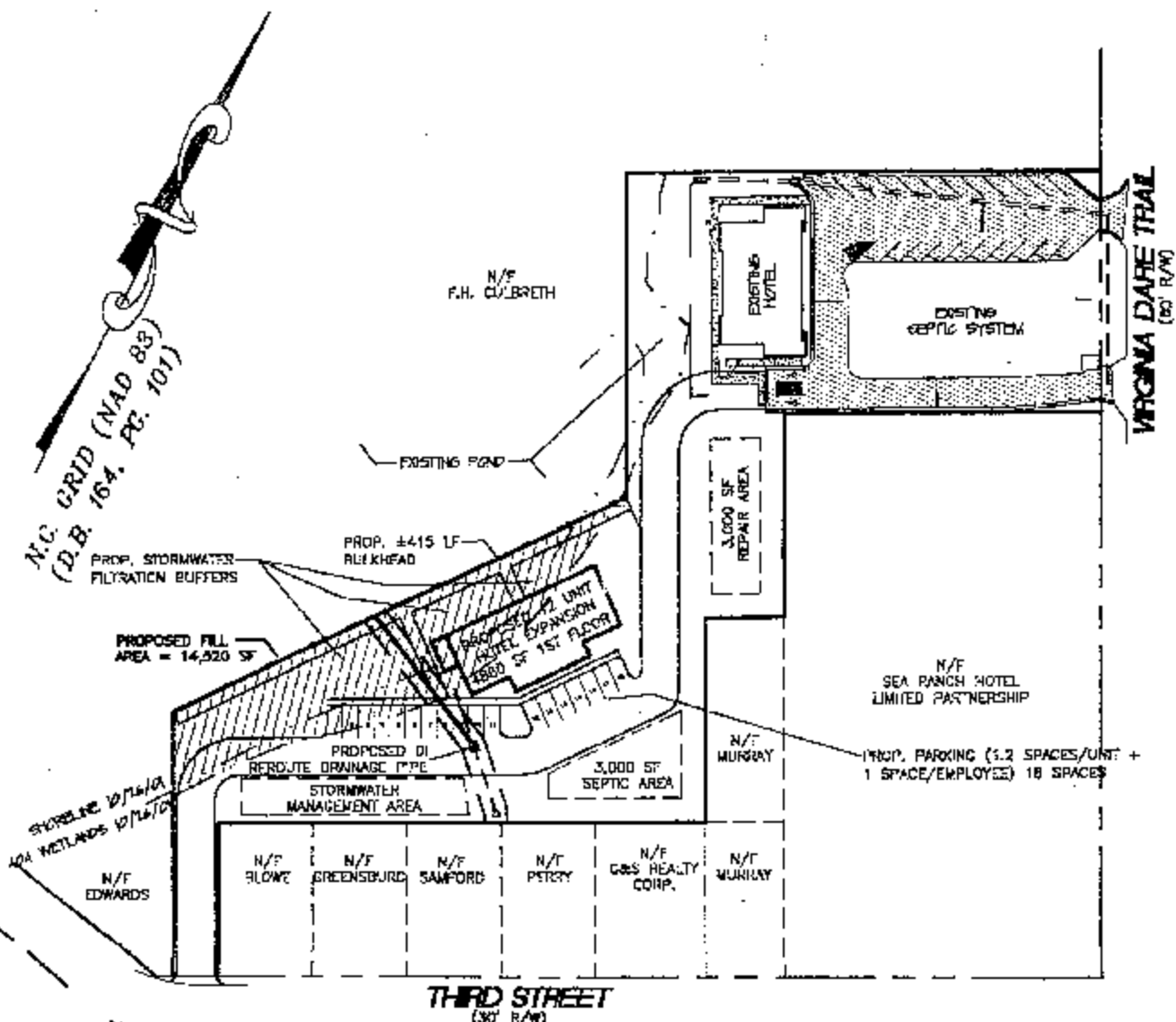


VICINITY MAP

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NOTES

1. DARE CO. PIN NUMBER: 9684 06 48 1233
2. TOTAL AREA OF PROPERTY: 106,138 SF (2.44 AC)
UPLAND AREA = 87,084 SF (2.00 AC)
WETLAND AREA = 19,054 SF (0.44 AC)
(AREAS COMPUTED BY COORDINATE METHOD)
3. PROPERTY LOCATED IN A FIRM ZONE AE (EL 10')
(SUBJECT TO CHANGE BY F.E.M.A.)
4. AREA TO BE FILLED = 14,520 SF (0.33 AC)



Rev 01/17/02 JED

SCALE

FILL PERMIT FOR